

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

JAMES YOUNG,)
)
Plaintiff,)
)
v.) No. 2:14-CV-04097-NKL
)
FLAGSTAR BANK, F.S.B.,)
)
Defendant.)

ORDER

Plaintiff James Young's motion to remand [Doc. 10] is DENIED.

Young argues that Defendant Flagstar Bank, F.S.B. missed the 30-day window provided under 28 U.S.C. § 1446(b) to remove civil cases from state courts. Section 1446(b) specifically provides:

The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief[.]

Young sent copies of the state-court petition and other materials to Flagstar by facsimile and electronic mail on February 28, 2014. [Doc. 10, p. 1, ¶ 1.] Flagstar was served on March 10, 2014. [Doc. 11-1, p. 1.] Flagstar removed the case to this Court on April 9, 2014 [Doc. 1], more than 30 days after receipt of the state-court petition and other materials by facsimile and electronic mail, but less than 30 days after service.

In *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 348 (1999) a similar issue was presented to the U.S. Supreme Court. There the plaintiff sent a complaint to the defendant by facsimile and then formally served defendant with the complaint two weeks later. The defendant filed its notice of removal more than 30 days after receiving the facsimile, but

within 30 days of formal service. *Id.* The Supreme Court found that the facsimile notice of a complaint did not trigger the 30-day deadline in § 1446(b). It held that a defendant “is required to take action only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend.” *Id.* at 350. Sending a facsimile did not constitute service of a summons or other authority-asserting measure requiring a person or entity to appear and defend. *Id.*

The present case is indistinguishable from *Murphy Brothers*. Having removed the case from state court within 30 days of service, Flagstar complied with the time limit established in § 1446(b).

Young’s motion to remand [Doc. 10] is DENIED.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: August 1, 2014
Jefferson City, Missouri